

DEPARTMENT OF STATE REVENUE

03920496.LOF

LETTER OF FINDINGS NUMBER 92-0496 WTH

Withholding Tax

For The Periods: December 31, 1985 through and including January 31, 1992

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

1. Withholding Tax – Responsible Officer

Authority: IC 6-3-4-8(f); IC 6-8.1-5-1(b)

The taxpayer protested the determination that he is a responsible officer personally liable for the employee withholding tax liabilities of the corporation.

4. Negligence Penalty - Imposition

Authority:

The taxpayer protested the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

The taxpayer is not a shareholder, officer or director of the corporation. The plan of reorganization submitted to the Bankruptcy Court did reveal that the taxpayer was to be issued 48% of the shares of the corporation and made an officer and director of the corporation. These events were never effectuated. The taxpayer did have signature authorization for the corporation.

1. Withholding Tax – Responsible Officer

DISCUSSION

The taxpayer protests the Department's assessment of withholding tax liability for the period of Jan. 1994 through Sept. 1994. The taxpayer asserts that during the assessment period, he was not responsible for collecting and remitting withholding tax for the corporation. Under Indiana law, a corporate officer can be held liable for a particular tax deficiency if the individual held a position of authority or responsibility with respect to that particular deficiency. This "responsible officer" liability is found in IC 6-3-4-8 (F), which states in pertinent part

" . . . In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties and interest."

The taxpayer asserts that he had no direct involvement with payroll processing operations during the assessment period. The taxpayer asserts that he is not liable for any withholding tax deficiency that may have incurred. The taxpayer alleges that he was a manager in the field and was seldom in the office.

Once the Department issues a tax, the taxpayer bears the burden of establishing that the assessment was issued in error. Indiana Code 6-8.1-5-1(b) states in part:

The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

To support his claim the taxpayer proffers the following.

1. Taxpayer did not actively participate in the financial management of the corporation.
2. The President and the Secretary managed the corporation.
3. The taxpayer neither signed nor filed the withholding tax returns.
4. The taxpayer was not allowed to participate in discussions of financial matters regarding the corporate taxpayer.
5. Taxpayer's signature appeared on only ten (10) checks a year as the second signatory.
6. The corporate resolution appointing the taxpayer as an officer and director were never signed or approved by the shareholders.

FINDINGS

The taxpayer's protest is sustained. The taxpayer is not liable for the withholding tax assessment imposed by the Department.

2. Tax Administration - Penalty and Interest

DISCUSSION

The taxpayer protests the Department's assessment of a ten percent (10%) penalty and interest. The taxpayer was sustained in Issue 1, therefore, the question of penalty and interest is moot.

FINDINGS

The taxpayer's protest is sustained.

CONCLUSION

The taxpayer's protest is sustained.

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